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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the matter of)
)
Implementation of the)
Telecommunications Act of 1996:)
)
Accounting Safeguards Under the)
Telecommunications Act of 1996)

CC Docket No. 96-150

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Comments of the Yellow Pages Publishers Association

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Executive Summary of the Comments of the Yellow Pages Publishers Association

The Yellow Pages Publishers Association (YPPA) believes that the Commission must look at the accounting rules for sections 272 and 274 independent of each other. Congress clearly chose not to regulate electronic publishing under section 272 and instead placed it separately in section 274, subject to its own, different set of requirements.

Regarding the annual compliance review required under section 274(b)(8), the Commission should impose requirements which are no more onerous than necessary to prove that the affiliate or joint venture has not violated the affiliate transaction rules. The independent compliance review required by section 274(b)(8) should only require the scrutiny of the records of the transactions between the BOC and the affiliate under sections 274(b)(3) and (4).

To fulfill the annual reporting requirements of section 274(f), the Commission should accept either the Form 10-K of the electronic publishing affiliate, if the affiliate is publicly traded, or the Form 10-K of the holding company if the affiliate is not publicly traded.

The Commission asks whether it should adopt additional safeguards beyond those imposed by the statute. YPPA answers with a resounding "no!" Congress was very precise in adopting section 274. The Commission should not impose any additional safeguards that are not found in the statute. The term "operated independently" in section 274(b) is descriptive of the requirements contained in sections 274(b)(1) through (9), and not in invitation to impose additional regulations.

Finally, the Commission tentatively concludes that it should apply the soon to be modified affiliate transaction rules to network access and interconnection for basic telephone service to electronic publishers. This is unnecessary, because the language of the statute is clear -- network access and interconnection for basic telephone service is to be available at just and reasonable tariffed rates, and should be the same for all electronic publishers, whether affiliated with the BOC or not.

Congress determined that the rules contained in section 274 will protect consumers and allow for fair and meaningful competition in the delivery of electronic publishing services. The Commission should closely follow Congressional intent and not regulate electronic publishing with a heavy hand.

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To: The Commission		

Comments of the Yellow Pages Publishers Association

The Yellow Pages Publishers Association ("YPPA"), by its attorneys, hereby submits Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. YPPA is the largest trade association in the Yellow Pages industry, with more than 400 members. Its membership, which represents 90 percent of all Yellow Pages directories published in North America, generates 98 percent of all Yellow Pages advertising revenues. In addition, many of YPPA's members are affiliated with local telephone exchange providers. YPPA is submitting comments in this proceeding on the Commission's implementation of the Accounting Safeguards Under the Telecommunications Act of 1996 because many of YPPA's members may engage in providing electronic publishing and interLATA information services and will be affected by the accounting rules for electronic publishing.

I. Relationship of Section 272 and Section 274

In paragraph 105, the Commission asks for comments on the relationship between section 272 and 274. Specifically, the Commission asks if it should apply the same affiliate transaction rules for both section 272 and section 274 affiliates.

YPPA believes that the Commission must look at the accounting rules for sections 272 and 274 independent of each other. Congress clearly chose not to regulate electronic publishing under section 272 and instead placed it separately in section 274, subject to its own, different set of requirements.

Clearly, if a BOC affiliate offers electronic publishing within the same affiliate as it offers interLATA telecommunication services, interLATA information services, or manufacturing subject to section 272 separate affiliate requirements, the affiliate must meet the structural separation requirements of both sections 272 and 274. Other requirements of sections 272 and 274 (such as the affiliate transaction requirements) however, cannot meaningfully be applied on an entity-wide basis and need to be applied on a service-by-service basis. As an example, should a BOC decide to offer interLATA telecommunications services and electronic publishing through the same affiliate, the affiliate would have to meet the structural separation requirements of both section 272(b) and section 274(b). Yet, when providing interLATA telecommunications services, the affiliate would be required to follow the affiliate transaction requirements of section 272(b)(5), but when providing electronic publishing, the affiliate would be required to follow the affiliate transaction requirements of section 274(b)(3).

Furthermore, it is worth noting that section 274 covers both interLATA and intraLATA electronic publishing. Although the Commission recognizes that interLATA, but not intraLATA, information services are subject to the separate affiliate requirements of section 272, no such distinction is made with electronic publishing. If Congress had intended to distinguish between inter and intraLATA electronic publishing, it could have done so as it did in section 272 for inter and intraLATA information services.

II. Audit Requirements

The Commission seeks comment regarding the annual compliance review required by section 274(b)(8). The Commission should impose requirements which are no more onerous than necessary to prove that the affiliate or joint venture has not violated the affiliate transaction rules.

Section 274(b)(3) requires that all transactions between the affiliate and the BOC are carried out in a manner consistent with operational independence, are reduced to writing, filed with the Commission, and publicly available,^{1/} and auditable in a manner consistent with generally acceptable auditing standards. Additionally, section 274(b)(4) requires that any asset transferred from the BOC to the affiliate must be recorded, and must comply with Commission rules on such transfers. The independent compliance review required by section 274(b)(8) should only require the scrutiny of the records of the transactions between the BOC

^{1/} While the statute requires that these contracts be available for public inspection, the Commission must allow for the protection of proprietary information contained within those documents. The Commission could make its rules in 47 C.F.R. 0.459 (Requests that materials or information submitted to the Commission be withheld from public inspection) specifically applicable to the submissions required by section 274(b)(3).

and the affiliate under sections 274(b)(3) and (4). These transactions will be properly recorded, and must be auditable.

The audit should make sure that these transactions are valued properly under the Commission's rules in order to prevent cross-subsidies. No further review is called for.

These annual reviews should not become massive fishing expeditions, wasting precious time, energy and money. Congress is clear that transactions between the BOC and the affiliate must be reduced to writing. A review of these transactions (already filed at the Commission and publicly available) is all that should take place.

YPPA does not object to the Commission's suggestion that the affiliate should file a report detailing: the scope of the examination; the conclusion of the examination; and any limitations placed on the examiner by the affiliate, as long as the examination is limited as noted above. YPPA also agrees that a copy of the examiner's report should be attached to the affiliate's report to the Commission.

YPPA also notes that the timing of this examination may vary, depending on whether or not the affiliate was providing electronic publishing services at the time of enactment.^{2/} For grandfathered services, the first audit should be conducted by February 8, 1998. For non-grandfathered services, the first audit should be conducted one year after the affiliate engages in electronic publishing activities.

^{2/} Section 274(g) requires that electronic publishing services being offered to the public on the date of enactment (February 8, 1996) are not required to comply with the rules of section 274 until February 8, 1997 (one year after enactment). The affiliate may be formed before February 8, 1997 for grandfathered services. New services must be offered through a separated affiliate.

III. Annual Reporting Requirements

Section 274(f) requires the filing of an annual report similar to the Securities and Exchange Commission's (SEC) Form 10-K. YPPA agrees with the Commission that, where an affiliate's stock is publicly traded, and the affiliate files a Form 10-K, then the affiliate should be able to file a copy of that form to satisfy the requirements of section 274(4). If, however, the affiliate is owned, in whole or in part, by the BOC holding company, the affiliate may not file a Form 10-K. The owner of the affiliate, however, must file a Form 10-K, which will include much of the same relevant financial information about the affiliate.^{3/} The Commission should also accept the Form 10-K of the holding company as a substitute for the Form 10-K of the affiliate. Otherwise, the affiliate will be required to perform significant additional work to create a separate Form 10-K. Additional meaningless paperwork is not the goal of the Telecommunications Act of 1996.

The easiest, most efficient, and most sensible way to satisfy the requirements of section 274(f) is by the Commission accepting the Form 10-K that is filed with the SEC by either the affiliate, if publicly traded, or the holding company. If there were the unlikely situation where neither the affiliate nor its owners were required to file a Form 10-K with the SEC, the Commission could require the affiliate to complete a Form 10-K and file it only with the Commission.

^{3/} Today, all RBOCs are publicly traded, and must file a Form 10-K.

IV. Transactional Requirements

In paragraphs 109 through 112, the Commission asks for comments on the affiliate transaction requirements. In paragraph 109, the Commission asks whether it should adopt additional safeguards beyond those imposed by the statute. YPPA answers with a resounding "no!" Congress was very precise in adopting section 274. The Commission should not impose any additional safeguards that are not found in the statute. Congress has determined that the rules contained in sections 274 are all that is necessary to protect the ratepayers from potential harm and unaffiliated electronic publishers from potential anti-competitive behavior. Additional requirements would overregulate when Congress chose not to do so, and only harm the ability to efficiently offer services to the public in a cost-efficient manner.

In paragraph 110, the Commission asks about how transactions should be carried out in a manner consistent with operational independence. First, the term "operated independently" in section 274(b) is descriptive of the requirements contained in sections 274(b)(1) through (9). To carry out transactions in a manner consistent with such independence is to carry out transactions that do not violate any requirements of sections 274(b)(1) through (9). No additional requirements are necessary to ensure operational independence.

The Commission's own use of the term "operate independently" has been descriptive, rather than an invitation to impose additional requirements. In 47 C.F.R. § 64.702(c)(2), the term "operate independently" is a description of the enumerated separation requirements that follows in the rule, not a separate basis for imposing additional requirements as is proposed

in this proceeding. Similarly, the separation rules for BOC cellular affiliates state that the affiliate "must operate independently in the provision of cellular service," and lists four criteria for satisfying this general guideline: (1) separate books; (2) separate officers; (3) separate operating, marketing, installation and maintenance personnel; and (4) separate computer and transmission facilities.^{4/}

Given the apparent Congressional intent not to attach additional requirements to the term "operate independently" and the Commission's use of the term itself, the Commission should conclude that the term "operate independently" in section 274(b) and the requirement in paragraph 274(b)(3) to carry out transactions in accordance with that independence simply means compliance with all the requirements of paragraphs 274(b)(1) through (9).

In paragraph 111, the Commission seeks comment on how to ensure that affiliate transactions can be "auditable in accordance with generally acceptable auditing standards."^{5/} The Commission notes that generally acceptable auditing standards refers to the guidelines of the American Institute of Certified Public Accountants (AICPA). YPPA supports using AICPA standards. These standards are well-known, and developed by accounting experts. This will help avoid confusion and will allow for greater ease during the annual audit.

V. Application of Affiliate Transaction Rules to Network Access and Interconnection

In paragraph 117, the Commission tentatively concludes that it should apply the soon to be modified affiliate transaction rules to network access and interconnection for basic

^{4/} 47 C.F.R. § 22.903(b) (1995).

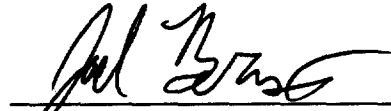
^{5/} NPRM at paragraph 111, citing 47 U.S.C. § 274(b)(3)(C).

telephone service to electronic publishers. The statute, however, requires that network access and interconnection be just, reasonable, and according to a filed tariff (so long as rates for such services are subject to regulation). The rates charged to affiliated and unaffiliated electronic publishers must, according to section 274(d), be the same. There is no need for additional rules and regulations to implement this section. The language of the statute is clear -- network access and interconnection for basic telephone service is to be available at just and reasonable tariffed rates, and should be the same for all electronic publishers, whether affiliated with the BOC or not.

VI. Conclusion

The Commission should not regulate electronic publishing with a heavy hand. Section 274's requirements are clear. Congress imposed this regime, and determined that the rules contained in section 274 will protect consumers and allow for fair and meaningful competition in the delivery of electronic publishing services. In fact, Congress did not require the Commission to engage in a rulemaking to implement section 274. Much of the Telecommunications Act of 1996 is aimed at elimination of overregulation. The Commission should heed that same message when considering rules implementing the accounting safeguards of section 274.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Albert Halprin", written over a horizontal line.

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